

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
WILLIAM J. MURRAY,	)	MISCELLANEOUS BUSINESS
	)	DOCKET NO. 04-MBD-10069
<i>Plaintiff,</i>	)	
	)	(Related to Cause
v.	)	No. 3:03 CV-088P, U.S. District
	)	Court, Northern District of
TXU CORP. <i>et al.</i> ,	)	Texas, Dallas Division)
	)	
<i>Defendants.</i>	)	
_____	)	

**ANP'S MOTION FOR LEAVE TO FILE SURREPLY MEMORANDUM**

American National Power, Inc. ("ANP") respectfully moves pursuant to Local Rule 7.1 for leave to file the attached Surreply Memorandum to address new arguments and allegations in the Reply Memorandum In Support of Motion to Compel (hereinafter "Reply") filed by the Defendants TXU Corp., TXU Energy Company L.L.C., and TXU Portfolio Management Company L.P. f/k/a TXU Energy Trading Company (collectively "TXU"). In support of this Motion, ANP states as follows:

1. TXU filed a motion to submit a Reply on March 26, 2004, and it refiled the motion on March 31, 2004.<sup>1</sup> The Court granted TXU leave to file the Reply on April 1, 2004.
2. TXU's Reply raises various new arguments that misstate the factual record in this case, as well as the legal standards applicable to TXU's Motion to Compel. Chief among these misstatements is TXU's unfounded and unsubstantiated allegation that ANP deliberately tried to

<sup>1</sup> The Reply was first filed with an Assented-To Motion in which TXU's counsel certified, inaccurately, that ANP granted its unqualified assent to the filing of a Reply. In correspondence and several phone conversations with TXU's attorneys, ANP's counsel explained that ANP would assent to a Reply, provided TXU extended the same courtesy to ANP in regard to a Surreply. See April 9, 2004 Affidavit of Christopher H.M. Carter ("Carter Aff."), Exhibit D. TXU proceeded to file its Reply but, for reasons that remain unclear, it refused to assent to a Surreply. Even after TXU filed its Reply on March 26, ANP again advised TXU's counsel that, notwithstanding any prior confusion among counsel, ANP would assent to the Reply (thereby obviating the need for TXU to withdraw its Assented-To Motion), if TXU assented to a Surreply. *Id.* TXU rejected this proposal. *Id.*, Exhibit E.

avoid service of process in December 2003, and – notwithstanding evidence of ANP's repeated offers to compromise – that ANP failed to deal in good faith in responding to TXU's subpoena.

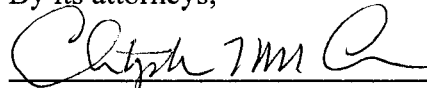
3. ANP submits that that proposed Surreply Memorandum is necessary to both respond to these allegations to clarify the factual record in this case, and to address other arguments in the Reply concerning the legal standard governing the instant dispute.

4. Accordingly, ANP respectfully requests that this Court grant ANP leave to file the proposed Surreply Memorandum.

Respectfully submitted,

AMERICAN NATIONAL POWER, INC.

By its attorneys,



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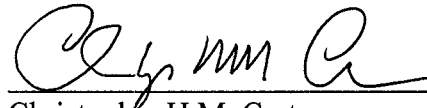
(617) 345-9000, phone

(617) 345-9020, facsimile

Dated: April 9, 2004

CERTIFICATION UNDER LOCAL RULE 7.1(A)(2)

I, Christopher H.M. Carter, counsel for ANP, hereby certify that on March 31, 2004, I conferred in good faith with Anita Bapooji, counsel for TXU, concerning this Motion, and that Attorney Bapooji advised that TXU does not assent to the Motion.



Christopher H.M. Carter

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by First Class U.S. Mail to all counsel of record.



Christopher H.M. Carter

#480469